IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr. Appeal No.469 of 1999

Reserved on 21.09.2007

Date of decision: 26.10.2007

Naveen Singh Appellant

Versus

State of Himachal Pradesh Respondent

Coram

The Hon'ble Mr. Justice V.K.Ahuja, J.

Whether approved for reporting[1]?

For the appellant: **Mr.Virender Rathore, Advocate.**

For the respondents: **Mr. V.K.Verma, Addl. Advocate General.**

V.K.Ahuja, J.

This is an appeal filed by the Appellant against the judgment of the Court of ld. Adll. District & Sessions Judge (1) Kangra at Dharamshala dated 30.10.1999 vide which the appellant was held guilty of the offence under Section 324 IPC and sentenced to rigorous imprisonment for a period of one year alongwith a fine of Rs.1,000/-. In default of payment of fine, the appellant was to undergo imprisonment for a period of three months.

Briefly stated, the facts of the case are that on 6.11.1997 at about 4.15 P.M. an information was received from the Medical Officer, CHC, Indora at the Police Station that one person named Sunil Kumar has been admitted with possible stab injuries in abdomen. On this, information, PW-9 ASI Avtar Chand, Police

[1] Whether the reporters of Local Papers may be allowed to see the Judgment?

Station, Indora went to the CHC, Indora , gave an application to the Medical Officer and took his opinion that the injured was fit to make a statement. Thereafter, he recorded the statement of the injured who stated to have received two injuries with knife. The said statement was sent to the Police Station on which a case was registered and after investigation, the challan was filed as against the appellant under Section 307 IPC. The appellant was tried under Section 307 IPC and on conclusion of the trial, he was held guilty under Section 324 IPC and was convicted and sentenced as detailed above.

I have heard Shri Virender Rathore, learned counsel for the appellant and Mr. Virender Verma, Additional Advocate General for the State-respondent.

The submissions made by the learned counsel for the appellant were that the case has been falsely made out against the appellant on the basis of enmity. It was submitted that there was no occasion for the appellant to cause injuries on the person of the injured. The appellant did not mention the name of the assailant at the time of his Medico Legal Examination or before the Medical Officer at Private Hospital where he went after his first medical examination at CHC, Indora. Thus, it was submitted that inspite of the opportunities given to him to name the assailant, he did not name the assailant before the two Medical Officers, who examined him. In his report to the specialist and at the time of medical examination, he had stated to have received one injury on his stomach and one on his back which finds support from first Medico Legal Report at CHC Indora. Injury on the left side of the chest was

also sought to be proved from the statement of the Medical Officer running a private clinic who for the first time stated about the third injury. Thus, it was submitted that the injured had not named the appellant as assailant at the first two opportunities which were available with him and the medical evidence does not corroborate his statement and as such, his statement coupled with medical evidence is not sufficient to prove the guilt of the accused.

It was further submitted that there were two eye witnesses to the occurrence and only one of them was examined who did not support the prosecution and the second witness was given up though he should have been examined and subjected to cross-examination and the un-corroborated statement of the injured cannot be sufficient to prove the guilt of the appellant particularly when other persons were also present at the spot and the occurrence took place during day time in the Bazaar where number of persons were available . Thus, it was submitted that the findings of the trial Court convicting the accused are liable to be reversed.

On a perusal of the first information report lodged with the police Ex.PW-3/A recorded under Section 154 Cr.P.C., it is clear that the complainant has stated in his statement recorded at 5.20 P.M. that the occurrence took place at 3.50 P.M. when he was standing outside a shop and the accused came there and stated that you are BADMAHS and he(injured) was earlier also beaten by the accused and then inflicted one blow with knife on the left side of the stomach and the other blow on his back with knife and ran away. The complainant clearly stated that at that time one Shri Satish

Kumar whose father's name as well as residential address was given by him as well as his occupation being driver and another person Baldev Raj whose name, parentage and village were also given who were present there and rescued him and took him to CHC Indora. Out of these two eye witnesses, the prosecution examined only PW-4 Satish Kumar who only stated that he was going in the bus and he got down from the bus on seeing blood oozing out from the person of PW-3 and he saw the accused running away from the spot. Thereafter two other had run away from the spot. He did not state that the respondent inflicted the blows in his presence with a knife or he rescued the injured from the clutches of the accused. He further stated that he saw the accused for the first time and was told about his name and address by the persons who were present there meaning thereby that they were more than one in number. He further stated that there were number of persons at the place of occurrence but nobody rescued the injured. He clearly stated that the injured and he belong to the same Village and he knows him from childhood and he had every reason to state true facts particularly as against the appellant but surprisingly he simply saw the accused running from the spot, but did not state anything about the occurrence or the injuries having been inflicted by the accused at that time. Therefore, his statement does not corroborate the testimony of the injured in regard to the injuries inflicted by the accused or even in regard to his presence. He had seen the accused for the first time and thereafter he stated about his name and parentage as learnt by him and his statement is not sufficient to hold that he had identified the accused as the same person who ran away from the spot.

From the above discussion, it is clear that the only eye witness examined namely, PW-4 Satish Kumar has not supported the prosecution case fully and since two eye witnesses had been named, it was required of the prosecution to have examined the other eye witness namely Baldev Raj whose statement was material who had rescued the injured and according to the injured, he had taken him to the hospital also. However, this eye witness named PW Baldev Raj was given up by the prosecution simply on the plea that the witness is of the same sequence. There is no reason to give up an eye witness particularly when there are only two eye witnesses and one of them had already been examined and had not supported the prosecution case fully. It was required of the prosecution to have examined this witness and in case he did not support the prosecution case, he could have been declared hostile and cross-examined by the prosecution so that the Court could draw an inference about his testimony. However, giving up of such witness in these circumstances cannot be said to be sufficient to corroborate the testimony of the injured and therefore, the Court is left with the solitary statement of the injured coupled with the medical evidence and some support in regard to the presence as mentioned above from the statement of PW-4 Satish Kumar.

In regard to the medical evidence, I have already referred to the statements of PW-1 Dr.T.K.Roy who examined the injured for the first time at CHC Indora who found only two injuries on the person of the injured and had referred him to Surgical Specialist at Dharamshala, but the injured chose to go to a private clinic at Pathankot and the said Medical Officer came up with the

report that he also saw the third injury on the chest which could have been noticed by PW-1 Dr.T.K.Roy but it was not noticed by him.

I fully agree that the injured has a choice to go to a Govt. Hospital or a private clinic as he deems proper but the opinion of the Medical Officer in the private clinic is different about the third injury which was not noticed by the Medical Officer at CHC Indora which makes his version doubtful to some extent.

Coming to the testimony of the injured himself as to whether it can be relied upon in the absence of support from the history of the case noticed by both the Medical Officers. A perusal of the first medical examination at CHC Indora shows that the Medical Officer simply observed the injuries allegedly caused by a knife but did not mention the facts of the case as to by whom he was injured and in what manner they were caused though the history is required to be given by the Medical Officer. In regard to the second Medical Officer, PW-2 Dr. Rajeev Sehgal of a private clinic, he stated about the third injury having been noticed by him but he only mentioned in history of the case 'attacked by some person'. It is not a case where the Medical Officers were not knowing the fact that in the history of the case, the name of the assailant has to be mentioned but it is a case where the Doctor is required not only to mention the name of the assailant but also the manner in which the injuries have been caused, which is missing. In case the Medical Officer had pleaded ignorance or had failed to record the history though required, it could have been presumed that they failed in their duty. But the statements of the Medical

Officers show that they asked the injured but whatever was stated by the injured, it was recorded by them. It is not a case where the Medical Officers had not mentioned the history or the injured was not asked the question about the history, but still the name of the assailant or the manner in which the injuries were inflicted have not been recorded not only by the first Medical Officer who examined the injured, but by the second Medical Officer also, which makes the version of the complainant/injured doubtful particularly when PW-4 Satish Kumar was not knowing the identity of the accused at the time accused inflicted the blow and PW-2 had even gone to the extent of mentioning that attacked by some person not mentioned therein.

The learned counsel for the appellant had relied upon two decisions to substantiate his plea that name of the assailants should have been mentioned in the Medico Legal Certificate. The decision in ***Rehmat*** vs. ***State of Haryana***-1996(3) Recent Criminal Report 588 shows that the complainant was examined by doctor but he did not disclose the name of the accused to the Doctor. Ordinarily, in a medical legal case, the doctor is supposed to write down the history of the injury but in that case , the medical papers did not indicate the name of the assailant and the accused was acquitted considering other facts of the case also. The decision in ***Devinder*** vs. ***State of Haryana*** - AIR 1997 SC 454 shows that in the medical legal report, only the name of the injured, his address, his occupation, and account of how injuries caused were mentioned meaning thereby that the name of the assailant was not disclosed at the earliest. Further, no special report as to registration was

sent to the Magistrate on day of occurrence when FIR was received but it was sent on the next day. The accused was held entitled to benefit of doubt keeping in view the facts of that case.

In the present case also, as discussed above, the name of the assailant is missing from the two medical reports prepared in the case. In the present case also, the statement of the injured was recorded at 5.20 PM. and the FIR was registered thereafter on the same day on the basis of this statement at about 5.25 P.M. but it was received by the Ilaqua Magistrate at 7.00 AM on 7.11.1997 as per the statement of DW-1 Makholi Ram Court Ahlmad of the Court which makes the prosecution version doubtful to some extent.

From the above discussion, it follows that the statement of the injured coupled with medical evidence and the statement made by two Medical Officers and the fact that one of the eye witnesses examined had not supported the prosecution case fully while the other was not examined, it makes the version of the injured doubtful, which cannot be relied upon in the facts and circumstances of the case in the absence of independent corroboration. The statement of the injured himself, coupled with the medical evidence could be said to be sufficient to prove the guilt of the accused in case no eye witness had witnessed the occurrence. But In the present case, only one eye witness was examined by the prosecution who did not support the prosecution case fully and the other eye witness who could have supported the case was not examined.

The sum total of the discussion is that the prosecution cannot be said to have proved the guilt of the accused beyond any reasonable doubt and the findings of the trial Court holding the accused guilty of the offence under Section 324 IPC convicting and sentencing him, are liable to be set aside.

The appeal is accepted and the judgment of the learned trial Court is set aside. Bail Bonds stand discharged. Fine be refunded forthwith.

26th October, 2007 (V.K.Ahuja),J
(SDS)